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23
24 **UNITED STATES DISTRICT COURT**
25
FOR THE CENTRAL DISTRICT OF CALIFORNIA

26 UNITED STATES of AMERICA and THE
27 STATE of CALIFORNIA, *ex rel.*, SHELBY
28 EIDSON,

Plaintiffs,

v.

AURORA LAS ENCINAS LLC, ,
SIGNATURE HEALTHCARE SERVICES
LLC, AND DOES 1 THROUGH 10, jointly
and severally,

Defendants.

CASE NO.: 2:10-cv-1031 JAK (RZx)
(Hon. John A. Kronstadt)

**RELATOR'S REPLY TO
DEFENDANTS' OPPOSITION TO
RELATOR'S MOTION IN LIMINE
NO. 5 TO EXCLUDE EMAILS
BETWEEN DR. HARASZTI AND THE
RELATOR, IN THEIR ENTIRETY,
PURSUANT TO FEDERAL RULES OF
EVIDENCE 401, 402, AND 403**

DATE: June 6, 2013
TIME: 2:30 P.M.
CRTRM: 750

1 Plaintiff hereby submits the following in Reply to Defendants' Opposition to
 2 Plaintiff's Motion in Limine No. 5 to Exclude Emails Between Dr. Haraszti and the
 3 Relator, in Their Entirety Pursuant to Federal Rules of Evidence 401, 402, and 403.

4 **I. DEFENDANTS' ACCUSATIONS OF FACTUAL MISSTATEMENTS
 5 ARE WITHOUT MERIT**

6 Defendant's claim that Relator's motion contains factual misstatements is false.
 7 Relator's representation that no party intends to call Dr. Haraszti as a witness is
 8 supported by the parties' witness lists, filed with the court on May 18, 2013. (Doc.
 9 485 & 487). Relator's representation that Defendants failed to identify the specific
 10 emails they planned to admit into evidence is supported by email exchanges between
 11 Relator's counsel and Defense counsel. (Declaration of Richard Diaz **Exhibit A**). The
 12 email between Relator's counsel and the Defendants show that they did not give
 13 precise email time stamps on several emails that were sent on the same date.
 14 Furthermore, the Defendants used vague language as to whether the list provided
 15 would be the entire list that they would introduce at trial. Finally, Relator did file
 16 another motion in limine to exclude portions of the emails in question. In this separate
 17 motion in limine, Relator was forced to assume, for several emails, what exactly the
 18 Defendants were intending to enter into evidence. There was a lack of clarity by the
 19 Defendants in setting forth which emails they intended to introduce. As Defendants'
 20 allegations of factual misstatement have been proven false, Relator's motion in limine
 21 should be granted.

22 **II. THE EMAILS BETWEEN DR. HARASZTI AND RELATOR ARE
 23 NOT RELEVANT TO THE INSTANT ACTION**

24 As detailed in Relator's moving papers, the Emails between Dr. Haraszti and the
 25 Relator should be excluded pursuant to the Federal Rules of Evidence 401, 402, and
 26 403. The information contained within the emails from Dr. Haraszti are not relevant to
 27 the issue of whether Medicare or Medi-Cal were defrauded by the Hospital, or whether
 28

worthless services were provided to the patients seeking treatment there. In regards to the counterclaims filed against Relator, the emails are arguably minimally relevant – but do not prove that Relator acted outside of activities protected under the False Claims Act. *See* 31 U.S.C. § 3730. As Realtor argued in her motion, any such minimal relevance is substantially outweighed by the emails’ certainty to mislead and confuse the jury and to force the Relator to spend an inordinate amount of time rebutting or contextualizing matters of no real consequence to the issues in this case. (See also, Section III below.)

As the emails sought to be admitted are irrelevant, they must be excluded pursuant to Federal Rules of Evidence 402.

III. EVEN IF THIS COURT DETERMINES THE EMAILS BETWEEN DR. HARASZTI AND THE RELATOR ARE RELEVANT, THEIR INTRODUCTION IS PRECLUDED BY FEDERAL RULES OF EVIDENCE 403

The emails Defendants seek to introduce would confuse issues, mislead the jury, cause delay, waste time and unfairly prejudice Relator. The Defendants claim that the emails should not be precluded by Rule 403 because the emails are not unfairly prejudicial. As cited by Defendants, evidence is unfairly prejudicial if it makes a finding more likely because it provokes an emotional response or otherwise tends to affect adversely the jury’s attitude. *United States v. Ramirez-Jiminez*, 967 F.2d 1321, 1327 (9th Cir.1992). Relator has set out how the emails contain flirtatious and irrelevant comments to Dr. Haraszti that would no doubt provoke an emotional response from the jury. The emails contain sexual references and comments that taken out of context could adversely affect the jury’s attitude toward Relator, even though they have minimal relevance to the claims in this case.

In *Monotype Corp. PLC v. International Typface Corp.*, the United States Court of Appeals affirmed a district court’s decision to exclude emails as evidence for trial. *Monotype Corp. PLC v. International Typface Corp.*, 43 F.3d 443, 450 (9th Cir. 1994).

1 The district court rejected defendant's arguments and granted Plaintiff's motion in
2 limine to exclude emails that contained derogatory and offensive remarks because the
3 prejudicial nature of the evidence outweighed any of its relevancy. *Id.* Similar to
4 *Monotype*, Relator's emails contain many remarks that would likely be offensive to
5 many jurors, clouding their judgment and outweighing any possible relevance that
6 they might have.

7 Lastly, Defendants true intention in introducing Relator's emails is to try and
8 embarrass and humiliate her and prejudice the jury against her. The Defendants seek to
9 expose her personal conversations that have no relevance to claims in this action.

10 **IV. CONCLUSION**

11 Based on the foregoing, Relator respectfully requests Relator's Motion in
12 Limine No.5 be granted to avoid undue prejudice to Relator.

13
14 DATED: May 23, 2013

Respectfully submitted,

15
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17 MARK A. KLEIMAN
18 DISABILITY RIGHT LEGAL CENTER

19 /S/ Richard Diaz
20 Richard Diaz
21 Attorneys for Plaintiffs